

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL

DEF
C/M

-----x
IMR ASSOCIATES, INC.,

Plaintiff,

-against-

REPUBLIC NATIONAL INDUSTRIES OF
TEXAS, L.P. and REPUBLIC INDUSTRIES,
INC.,

Defendants.
-----x

MEMORANDUM AND ORDER

Case No. 05-CV-1605 (FB) (WDW)

Appearances:

For Plaintiff:

CHARLES G. EICHINGER, ESQ.
Charles G. Eichinger & Associates, P.C.
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For Defendants:

PATRICK D. BONNER, JR., ESQ.
MELISSA KELLY DRISCOLL, ESQ.
Menz Bonner & Komar LLP
140 East 45th Street, 20th Floor
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BLOCK, Senior District Judge:

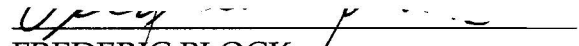
In this diversity action, plaintiff, IMR Associates, Inc. ("IMR"), sues defendants, Republic National Industries of Texas, L.P., and Republic Industries, Inc. (collectively, "Republic"), for breach of contract. Republic moves, pursuant to 28 U.S.C. § 1404(a), to transfer the action to the Eastern District of Texas, Marshall Division, where a previously filed declaratory-judgment action involving the same parties and issues is currently pending.

"The court before which the first-filed action was brought determines which forum will hear the case," *MSK Ins., Ltd. v. Employers' Reins. Corp.*, 212 F. Supp. 2d 266, 268 (S.D.N.Y. 2002) (footnotes omitted). Here, the first-filed action is before the Honorable Leonard Davis of the Eastern District of Texas; on June 2, 2005, Judge Davis decided that

that action will proceed. In any event, "[t]he general rule in this Circuit is that, as a principle of sound judicial administration, the first suit should have priority, absent the showing of balance of convenience in favor of the second action, or unless there are special circumstances which justify giving priority to the second," *William Gluckin & Co. v. International Playtex Corp.*, 407 F.2d 177, 178 (2d Cir. 1969) (citations and internal quotation marks omitted); a departure from this "first-filed rule" is not warranted here.

For these reasons, as elaborated in open court on January 27, 2006, Republic's motion is granted. The Clerk is directed to transfer the present action to the Eastern District of Texas, Marshall Division.

SO ORDERED.


FREDERIC BLOCK
United States Senior District Judge

Brooklyn, New York
January 27, 2006